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## Congressional Record S. 17605 - Moratorium on Coal Leasing in Montana

Mike Mansfield 1903-2001

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Interior Committee staff would go far toward correcting the serious problems associated with surface mining. We urge you and your colleagues to press forward and to report out the bill as amended.

Very truly yours,

PETER BORRELLI,  
Eastern Representative, Sierra Club,  
Washington.

SAN FRANCISCO, CALIF.,  
August 3, 1972.

Senator FRANK MOSS,  
Senate Office Building,  
Washington, D.C.

DEAR SENATOR MOSS: SIERRA Club commends you for proposing amendments to Interior Subcommittee strip-mining legislation. We support additions together with committee staff recommending contour mining ban to vastly strengthen committee print. We strongly urge quick committee adoption of package.

MICHAEL MCC. LOSKEY,  
Executive Director, Sierra Club.

Mr. MOSS. Mr. President, in addition, my esteemed colleague, Senator JORDAN, ranking minority member of the subcommittee who has worked valiantly beside me for many months on this legislation has received from the administration a letter of support for S. 630, with a recommendation for several amendments which are well taken and should be considered by our committee.

Consistent with the amendments which I offered in July to S. 630 I have prepared further amendments which I am ready to offer on the floor of the Senate. However, in view of the lateness of the hour and the apparent impasse which we face between the House version and the still emerging version on the Senate side, such action would appear to be a hollow gesture and would achieve nothing in this session of the Congress. Surface mining legislation appears to be doomed in this session for many reasons, not the least of which is the obvious and fundamental differences between the House and the Senate versions of the bill.

I recognize the fact that the distinguished Members of this body should not be expected to mark up and finish the work of the Interior Committee on the floor of the Senate and I also recognize the fact that there are many new concepts embodied in the chairman's amendment in the nature of a substitute which deserve careful consideration and detailed analysis—that such consideration and analysis demands further committee hearings and discussions and that we have run out of time.

State officials in Kentucky and Tennessee charged with supervising reclamation efforts in their States told me when I visited them in February of this year that they needed assistance in techniques of reclamation and particularly in Federal assistance in enforcing existing laws. It appears unlikely that this Congress will be able to do that. Westerners, on the other hand, have viewed Appalachia with dismay and plead with members of their delegations to halt pending coal operations in the West until a carefully orchestrated plan involving a thorough study of the land ownership pattern, natural resources, water and land uses and the sociological and economical impact of the proposed gargantuan mining development operations can be completed.

To that end, Senator METCALF, Senator MANSFIELD, Senator BURDICK, and I introduced a joint resolution urging the Secretary to suspend coal mining activities on Federal lands—comprising nearly 50 percent or more of the coal lands of the West—until such time as the Congress has completed action on surface mining legislation. A modified version of that resolution was reported from the Interior Committee to the Senate on October 6. This resolution states the sense of the Senate that Federal leasing be held in abeyance in Montana for a period of 1 year, or until we enact appropriate legislation to control surface mining. I earnestly urge your consideration of this measure.

The need for this resolution presses especially upon my colleagues from Montana. If the power developments proceed as planned in Montana they face a population increase during the next 15 years of another 280,000 to 312,000 and the population of the entire State was only 694,409 in the 1970 census.

The House bill does not take effect for 6 months.

Montana needs time for a study and planning of these population problems alone. The Secretary of the Interior has authority to do all that we ask him to do by this resolution. The added impetus is simply that the Senate urges him to do it. Now.

The sense of the Senate resolution declares that going slow is not enough and that withdrawal of the lands involved and suspension of activities is necessary to protect the lands until appropriate planning and long-range studies can take place including a study of the landownership, natural resources, water and land uses, and the sociological and economical impact of the mining activity on the total community.

Mr. President, I urge adoption of this sense of the Senate resolution for a temporary moratorium on coal leasing activities in the State of Montana. I would further ask that the article from the Los Angeles newspaper entitled "Great Coal Rush—Will It Ravage Montana's Land?" which I entered in the RECORD October 5, 1972, be reprinted as part of these remarks. It is an excellent article and states the problems facing the residents of Montana most eloquently and succinctly.

There being no objection the article was ordered to be printed in the RECORD, as follows:

#### SURFACE MINING RECLAMATION AND REGULATION

Mr. MOSS. Mr. President, for over a year and a half the Committee on Interior and Insular Affairs and my subcommittee on minerals, materials, and fuels, in particular, have been wrestling with the problems of surface mining regulation.

Ten bills were introduced in the 92d Congress and the committee has now produced four committee prints representing the combined efforts of the subcommittee membership and that of the chairman. Even at this late date in the session we are still seeking the best solution to a very difficult and complicated problem and we are urgently, actively and most sincerely working toward a bill which will protect the environment and allow us to obtain the minerals necessary to the operation of our society.

The need for legislation is clearly illustrated in a newspaper story from the Los Angeles Times of September 29, using the

#### MORATORIUM ON COAL LEASING IN MONTANA

The Senate proceeded to consider the resolution (S. Res. 377) to provide a temporary moratorium on Federal coal leasing in the State of Montana, and for other purposes.

Mr. MOSS. Mr. President, I reluctantly accept the fact that there is small likelihood of a comprehensive surface mining bill this session. As the chairman of the Interior Committee said when he filed his amendment in the nature of a substitute to S. 630 on Friday last, there are two very different bills pending before the Congress. H.R. 6482 which was passed last night by the House differs vastly from S. 630 and its various amendments. The chairman of the House Interior Committee filed separate views with regard to the House bill (H.R. 6482) in which he carefully and realistically set forth the types of problems which he sees with the legislation. I share his concern that any legislation must be broad enough to be applied across the entire sweep of the Nation.

On the Senate side, I had hoped, until the last several days, that we would be able to mark up S. 630, adding amendments which Senator JACKSON, Senator METCALF, and I had proposed in July. I have received wires from environmental groups which would support this, and I ask unanimous consent that they be included in these remarks.

There being no objection, the telegrams were ordered to be printed in the RECORD, as follows:

WASHINGTON, D.C.,  
August 2, 1972.

Senator FRANK MOSS,  
Senate Office Building,  
Washington, D.C.:

Your bill on strip mining with the proposed amendments of Senator JACKSON and the



State of Montana as the stage upon which the drama of control of surface mining is now focused. I ask unanimous consent that the story be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

**GREAT COAL RUSH: WILL IT RAVAGE MONTANA'S LAND?**

(By Joan Sweeney)

**SOME RANCHERS BATTLE TO SAVE RANGE BUT LAW FAVORS MINING COMPANIES**

**SARPY CREEK, MONT.**—Thirty miles from Custer's Last Stand, rancher John T. Redding is staging one of his own to keep the isolated, unpredictable land he has worked for the past 56 years.

Lawyers tell him his stand is as futile as Custer's.

His land lies in the path of the great coal rush that has swept eastern Montana, a sparsely populated area where skies are breathtakingly blue and water is precious.

The region is in danger of having its relaxed, rural way of life altered drastically by coal strip mining and proposed power projects to supply electricity not only for the area but for states as far away as Missouri and Iowa.

At Sarpy Creek, Westmoreland Resources wants to strip-mine Redding's land, for the low-sulfur coal beneath it.

**LAW ON ITS SIDE**

And Westmoreland has Montana law on its side.

Redding, like many other ranchers and farmers in eastern Montana, owns only the surface. At Sarpy Creek, the Crow Indians hold the mineral rights and have leased 30,876 acres to Westmoreland.

Under Montana law, private mining companies can seize the surface land through condemnation if the owner will not sell.

Redding was 12 years old back in 1916 when he and his family walked miles through snow, 2 and 3 feet deep, to reach their homestead.

Through good years and bad, through deadly winters and even deadlier drought, Redding stuck it out. During the depression, he watched as his neighbors abandoned their parched land for the greener fields of Washington and Oregon, but he stayed.

**WANTS TO CONTINUE**

He still wants to stay, but he says Westmoreland's agents have told him to sell at its price or have his land condemned. So far he has refused.

"They said, 'If you don't take this offer, we will take you to court, condemn you and you won't have anything,'" Redding's son, John R., said bitterly.

Westmoreland does not want all of his land, but Redding said he would be left with only hilltops and no water.

Lawyers that the Reddings consulted advised them to sell. Some of their neighbors, like Merle Cox, already have.

Cox is a taciturn bachelor, seemingly emotionless, his face weathered by 23 years on his ranch. "They said if I didn't sell they'd condemn it and take it, so I went and seen a lawyer. He said they could do it. It looked like selling was the only thing I could do," Cox said.

Montana law, written before statehood when mining was the territory's only industry, gives private companies holding the mineral rights the power of eminent domain to condemn the surface lands. The 1961 Montana legislature expanded the law to include strip mining.

A company can bring action in state district court to condemn a piece of land, and the judge then appoints three commissioners to assess the damages to be paid the owner.

John W. Northey, deputy Montana attorney general, said it had never been determined by the state's Supreme Court whether the mining company must pay the value of the land or merely for damage to it.

When the U.S. government opened eastern Montana land to homesteaders, it generally retained the mineral rights. The Indians, the Burlington Northern Railroad and the state also own mineral rights to extensive tracts.

The homesteaders knew when they claimed the land that they did not own mineral rights.

"At that time, I don't think anybody ever heard of strip mining," the younger Redding said. "If there was going to be mining, it would be underground, and it didn't worry them."

A spokesman for Westmoreland headquarters in Billings declined to discuss the firm's present or future operations.

**POLLUTION LAWS**

Some other mining officials believe that the only reason the ranchers refuse to sell is to try to extract a higher price for their land. And it is true that, although some ranchers see strip mining as destroying their way of life, others are happy to sell.

The national energy shortage, pollution laws banning high sulfur fuels and new technology have combined to suddenly make western coal, which is low in sulfur, sodium and ash, highly attractive. Also important is its vast quantity—an estimated 1.45 trillion tons within 6,000 feet of the surface in the Fort Union formation of Eastern Montana and Wyoming and the western Dakotas alone.

Economics dictates that this coal, which lies in thick seams relatively near the surface, should be removed by the cheaper method of strip mining, which uses giant shovels that can gulp 114 cubic yards of earth with one bite.

Opponents fear the mining could trigger an environmental crisis.

**DAMS PROPOSED**

They say that not only would strip mining chew up land now devoted to agriculture, the area's present economic mainstay, but that proposed energy plants with their enormous needs for water could stymie other industrial and agricultural development in the semiarid area. An Environmental Defense Fund study calculates that the mean annual flow of the Yellowstone, the main river, could be reduced as much as 81% by such plants' needs. And in dry years, the river's flow is only half of its average.

To supply enough water for the plants, the Bureau of Reclamation proposed damming the Yellowstone, building as many as nine reservoirs, and constructing an extensive network of large aqueducts.

"The Yellowstone River is an exceptional trout fishery and the only major uncontrolled river in Montana," said James Posewitz of the Montana Fish and Game Department. "One of the major issues is going to be whether we dam the Yellowstone."

**POWER NEEDS SEEN**

The North Central Power Study, a joint project of the U.S. Bureau of Reclamation and some 35 utilities, proposed 42 mine mouth, coal-burning power plants—21 in eastern Montana, 15 in Wyoming (which would require Montana water), four in southeastern North Dakota and one small plant in both South Dakota and Colorado.

The plants would produce 53,000 megawatts of power.

Even with the coal's low sulfur content and proposed federal standards for such plants, they would still produce approximately 2.1 million tons of sulfur dioxide a year, according to the EDF study.

"This material will, in turn, yield an as yet unspecified mixture of sulfurous and sul-

furic acids to be deposited downwind on farmland and communities," the study added.

It calculated the plants would produce anywhere from 94,500 to 787,500 tons of fly ash a year and as much as 1.87 million tons of nitrogen dioxide.

The prevailing wind most likely would carry the pollution eastward across the wheat fields and prairies toward the Black Hills.

"The Black Hills—they'll be black, black with soot," said Rep. George Darrow, a member of the Montana House of Representatives, the chairman of the state's Environmental Quality Council and a geologist.

Montana Power is constructing two 350-megawatt units at Colstrip, Mont., where its subsidiary, Western Energy, is strip-mining. It is using the first of the proposed mine mouth plants.

An alternative to these plants, which some consider obsolete and inefficient, is gasification plants that turn the coal into synthetic pipeline gas. Steam generators convert only 30-40% of the coal's energy into electricity while gasification has a 60% efficiency rate. Possible pollution from gasification plants includes sulfur compounds, ammonia, hydrogen cyanide and hydrogen chloride.

**PLANTS PLANNED**

Two gasification plants are under consideration for Dawson County, one near Hardin and another near Sarpy Creek, all in southeastern Montana.

Another possibility, given additional technology development, is multiproduct complexes that produce electricity, liquid and gas fuels and petrochemicals. Their coal and water demands would be enormous.

It is the multiproduct complexes that could touch off a population explosion. A Bureau of Reclamation memo estimated the area's population could increase during the next 15 years by another 280,000 to 912,000 persons. The population of the entire state was only 694,409 in the 1970 census.

The amount of strip mining already under way is small—primarily in the Decker Birney area and near Colstrip where both Western Energy and Peabody Coal Co. have pits—but it is expected to mushroom in the next few years.

Most of the coal is shipped out of state, sometimes a long way out. Burlington Northern recently transported 20,000 tons of coal 1,730 miles from Colstrip to a Tennessee Valley Authority plant.

State Lands Commissioner Ted Schwinden said, "This represents a continuation of what has been the traditional history of Montana—exploitation of its resources with a minimum of economic benefit to the state."

"We are left with a hole in the ground and the resource is gone forever."

Strip mining is not new to Montana. In 1923, the Northern Pacific Railroad (now Burlington Northern) began strip-mining coal for its steam locomotives at Colstrip and continued until 1958.

**PLANNING URGED**

South of Colstrip, the old NP spoils banks still rise like giant lumps of white dough, arid and eroded, against the blue sky. Only occasional tufts of weeds decorate them. Some fear these are a harbinger of eastern Montana's future landscape.

Rep. Darrow believes the coal development "has to be done with far more advance planning and forethought" than there has been.

"The mining could be accomplished with a minimal amount of land disruption," he said. "We don't need to open up a dozen mines simultaneously and have scattered fragmented exploitation."

Only now is some effort beginning toward finding answers and toward planning for what most regard as the inevitable.



## TASK FORCE FORMED

Mrs. John Cross of Glendive told a meeting of the Economic Development Assn. of Eastern Montana: "Events are happening so fast that few Montanans fully realize what effect the so-called coal development is going to have on their lives and on their environment. We will soon be in the position of locking the barn after the horse is stolen."

A task force of state agencies was recently formed to provide comprehensive planning that would consider social, economic and environmental factors.

The Bureau of Land Management, meanwhile, is delaying action on lease applications. "Why lease further areas when you don't know what you are doing?" one Bureau official in Billings said.

No such concern is expressed by the Bureau of Indian Affairs, which has granted leases and options on nearly 600,000 acres of Crow and Northern Cheyenne Indian land in Eastern Montana.

M. W. Babby, Indian Affairs assistant area director in Billings, indicated he feared that unless the coal was exploited now it would become valueless when new energy sources were found.

"We are going ahead and leasing it," he said. "It is an asset, and there are indications coal will be a salable product for only a few years."

A recent General Accounting Office report noted that the BIA takes the position the Environmental Protection Act does not apply to Indian lands and environmental impact statements are not required for coal exploration and mining projects.

The report criticized both the BLM and the BIA for failing to comply with Interior Department and environmental regulations for coal leasing and reclamation.

Perhaps the biggest question is whether the land can be reclaimed at all without constant and endless care and fertilization.

Optimists point to the experiment of Richard L. Hodder of the Montana Agricultural Experiment Station, financed by Western Energy at its Colstrip mine. He is studying various combinations of contouring, surface shaping, fertilizing and vegetation.

Hodder believes strip mining and reclamation can be one continuous process. In his method, when earth is removed to get at coal, it is used to fill any adjacent hole where a vein already has been mined. The spoil banks are then contoured, fertilized and planted as part of the reclamation project.

"I think reclamation is very possible over the long haul," he said. "Certainly I have demonstrated that it is on the short haul . . . I think the potential is very great for producing more than what the area produced previous to mining."

But a rancher in the area said, "With the amount of fertilizer they are spreading on, I could grow grass on a roof."

Hodder said, "We are trying to reproduce a country similar to what is here now—not the flat-topped buttes—but less high highs rounded in such a irregular fashion that they will fit into the natural landscape."

Hodder warned that reclamation work had to start before extraction did not continue simultaneously. Core samples must be analyzed to determine whether topsoil should be stockpiled and what kind of vegetation will above \$1,000 an acre.

The Burlington Northern has begun reclaiming the old NP spoil banks at Colstrip and estimates it will cost \$1 million for one thousand acres—\$1,000 an acre.

Montana law required that companies post bonds to guarantee reclamation. But Northey said the maximum limit is \$500 an acre. This could be less than the cost of reclamation.

Mr. MOSS. Mr. President, it now appears there is little possibility of Senate action on surface mining legislation be-

fore adjournment. If the Senate does not act on the surface mining measure this year, I call upon the leadership to make the consideration of such legislation the No. 1 priority of the 93d Congress.

I pledge to you, as chairman of the Subcommittee on Minerals, Materials and Fuels that I will do all I can to report to the Senate a strong balanced measure by March 1 of next year. H.R. 6452, S. 63, and the Jackson amendment give an excellent basis upon which to begin.

Mr. MANSFIELD. Mr. President, I have listened to the remarks of the able Senator from Utah (Mr. Moss) with great interest and I recognize he is accurate in his analysis of the current situation on surface mining legislation. I hope that Congress will take the initiative in adopting strong surface mining legislation this year. I appreciate the efforts of the Senate Interior Committee in reporting the resolution which would place a temporary moratorium on coal leasing and development on public lands in Montana.

The issue of surface mining and the consequences associated with this method has created a most difficult problem in the West. Because of projected power shortages, many interests see development of these vast coal deposits as new, untapped sources of energy. This must be approached cautiously. I believe too little attention is being given to conservation of our energy sources. Commercial exploration of these coal resources in Montana, Wyoming, the Dakotas, and other neighboring States without appropriate controls can lead to ultimate disaster far exceeding anything experienced in Appalachia.

I have given considerable thought to this issue in recent months and I have come to the conclusion that the only way the interests of my State can be fully protected is to adopt an absolute moratorium on all new strip mining on Federal lands until such time as it can be demonstrated that the developers have and will use appropriate technology to achieve necessary reclamation of these mined lands for future generations. Such a moratorium is necessary in view of the inability of the Congress, the Executive, and the individual States to adopt appropriate safeguards.

I believe the various Federal agencies involved in administering the vast acreage of Federal lands in the West have been derelict in refusing to issue regulations governing surface mining. These agencies were put on notice some 2 years ago but, to date, they have offered nothing in the way of constructive programs. The Congress has addressed itself to this situation but, because of the very serious conflicts between industry and environmental interests, we have not been able to muster sufficient support. It is an issue that must be given a position of priority in the 93d Congress.

I also believe that the individual State legislatures are going to have to address themselves to this issue. In the State of Montana, large coal development companies are acquiring surface rights without concern for the individual. The landowner is forced to accept the offered

price because of State laws. Private companies holding mineral rights have the power of eminent domain. A large portion of eastern Montana was settled under the Homestead Act. At the time the United States patented land to homesteaders, I am convinced that it was not contemplated that these lands would be subjected to strip mining.

We in the Congress have the responsibility of protecting the individual rights. I do not want to see the ranchers and farmers of eastern Montana forced off their land in the name of coal development which would leave the eastern part of the State an ugly eyesore to plague future generations. We sympathize with the most difficult situation facing our friends in Appalachia who live with the disastrous effects of uncontrolled strip mining. We have a responsibility to see that this part of our Nation is given all possible support in its efforts to redevelop.

Mr. President, again I wish to recommend as strongly as I can the need for a total ban on all new strip mining on Federal lands until we have a satisfactory program of reclamation. I believe that new laws governing reclamation of mined lands should not only apply to Federal leases but also to any private lands from which coal or other minerals enter interstate commerce. I am as interested in the economic development of Montana as any resident of the State but I certainly am opposed to uncontrolled destruction of the land. I might point out that the ultimate benefit from the proposed mining power generation program will not be in Montana. Power generation is designed to meet the increased demands of the urban areas far away from eastern Montana.

I have discussed this issue many times with my colleague, Senator LEE METCALF, whom I know shares my concern as a major proponent of strong surface mining legislation. I want to go on record today stating that Congress will hear more on this subject from the Senators from Montana in 1973.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 377) was agreed to, as follows:

*Resolved*, That it is the sense of the Senate that the Secretary of the Interior exercise his authority under existing law and withdraw temporarily from prospecting and exploration, lease, or other disposal subject to valid existing rights, deposits of coal owned by the United States in the State of Montana which can only be mined by surface mining methods, suspend pending applications for coal permits and, in accordance with the provisions of the Mineral Leasing Act of 1920 (30 U.S.C. 209), suspend all coal leases for surface mine operations not in actual production, or in diligent prosecution leading toward production, for a period of one year from the effective date hereof, or until Congress enacts legislation for the control of surface mining prior to the expiration of such one year period.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the resolution was passed.

Mr. PASTORE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.